1. Privacy Requirements-Generally

(a) No provider of health care, health care service plan, contractor or health information organization (HIO) shall use or disclose individual health information (IHI) regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in this chapter.

(b) A recipient of IHI pursuant to an authorization as provided by this chapter or pursuant to the provisions of subdivision (c) of Section 56.10 may not further disclose that IHI except in accordance with a new authorization or as specifically required by law or permitted by other provisions of this chapter.

2. Minimum Necessary

(a) When using or disclosing individual health information or when requesting IHI from another health care provider or health service plan, a health care provider or health service plan must make reasonable efforts to limit IHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

(1) Minimum necessary does not apply. This requirement does not apply to:

(A) Disclosures to or requests by a health care provider for treatment;

(B) Uses or disclosures made to the individual, as permitted under 56.10(b)(7) and HIPAA;

(C) Uses or disclosures made pursuant to an authorization under §56.11 or 56.21 and HIPAA;

(D) Disclosures made to the Secretary of Health and Human Services in accordance with HIPAA;

(E) Uses or disclosures that are required by law;

(F) Uses or disclosures which are required for compliance with applicable requirements of HIPAA or this demonstration project.

(2) In order to comply with these requirements, a health care provider or a health care service plan must meet the requirements of paragraphs (d)(2) through (d)(5) of 45 CFR 164.514 with respect to a request for, or the use and disclosure of, individual health information. Specifically, for all uses, disclosures, or requests to which the requirements in this paragraph apply, a health care provider or health service plan may not use, disclose or request an entire medical record, except when the entire medical record is specifically justified as the amount that is

reasonably necessary to accomplish the purpose of the use, disclosure, or request.

3. Contractors, Business Associates, and Health Care Clearinghouses

(a) Disclosures authorized under Civil Code section 56.10(c) to third parties require a business associate agreements in accordance with 45 CFR 164.504(e) if the third party is acting on the behalf of the health care provider or health care service plan or is otherwise required by HIPAA. Any business associate agreement must describe the permitted uses and further disclosures of the IHI consistent with the limitations in Civil Code section 56.10 and 56.13;

(1) Depending on the outcome of an entity's HIPAA preemption pursuant to 45 CFR 160. 203, Contractors can make disclosures under section 5 below, consistent with their business associates agreement;

(2) Neither Contractors nor business associates have the authority to independently make further disclosures under Civil Code section 56.10(c) and section 6 below and are not authorized to "use" the information unless consistent with Civil Code section 56.10(d) as further restricted by the terms of their business associates agreement.

(b) Health Care Clearinghouses. IHI may be disclosed to a person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans. However, information so disclosed shall not be further disclosed by the recipient in a way that would violate Civil Code section 56.13. Also required:

(1) A business associate agreement in accordance with 45 CFR 164.504(e);

(2) Any business associate agreement must describe the permitted uses and further disclosures of the IHI consistent with the limitations in Civil Code section 56.10 and 56.13.

4. Health Information Organizations

(a) An HIO must have a business associate agreement consistent with the requirements of 45 CFR 164.504(e) and must describe the permitted uses and further disclosures of the IHI consistent with the limitations in Civil Code section 56.10 and 56.13;.

(b) Relating to uses and disclosures of IHI, a HIO is prohibited from using or disclosing IHI other than as permitted in the business associate contract under which the HIO created or received the IHI.

(c) An HIO shall maintain the same standards of confidentiality required of a provider of health care with respect to medical information it receives.

5. Disclosures required by law

A provider of health care, a health care service plan, or a contractor consistent with section 3, shall disclose medical information if the disclosure is compelled by any of the following:

(a) By a court pursuant to an order of that court, but only to the extent expressly authorized by such order.

(b) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority, but only to the extent expressly authorized by such order.

(c) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency, consistent with 45 CFR 164.512(e)(1)(i) and Code of Civil Procedure section 1985.3

(d) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code, consistent with 45 CFR 164.512(e)(1)(i) and California case law imputing similar procedures that are in Code of Civil Procedure section 1985.3.

(e) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or another provision authorizing discovery in a proceeding before an arbitrator or arbitration panel, consistent with 45 CFR 164.512(e)(1)(i) and Code of Civil Procedure section 1985.3.

(f) By a search warrant lawfully issued to a governmental law enforcement agency.

(g) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code and 45 CFR 164.524, depending on the outcome of an entity’s HIPAA preemption pursuant to 45 CFR 160. 203.

(h) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when

investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant deaths, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(i) When otherwise specifically required by law and consistent with 45 CFR 164.512(a).

6. Permitted Disclosures

A provider of health care or a health care service plan may disclose medical information, consistent with more stringent laws, as follows:

(a) Treatment. The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient.

> (1) This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.
>
> (2) Disclosures to healthcare service plans for the purpose of treatment are limited to assisting coordination of care to providers who are also covered by the health care service plans when required by the terms of coverage, providing health care providers and patients with information about treatment alternatives and facilitating disease management pursuant to paragraph (e)(11) below and is subject to the minimum necessary standard in section 2 . Pre-authorizations and similar requirements are payment functions.

(b) Payment. IHI may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made.

> (1) The information may be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service

plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(2) IHI may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient if:

(A) the patient is, by reason of a comatose or other disabling medical condition, unable to con-sent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient.

(3) HIPAA standard payment transaction sets in accordance with 45 CFR 162.923 meet the necessary standard for payment.

(4) The following payment activities are permitted to determine the extent of the responsibility to pay:

(A) The activities undertaken by:

(i) A health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or

(ii) A health care provider or health plan to obtain or provide reimbursement for the provision of healthcare; and

(B) The activities in paragraph (1) of this definition relate to the individual to whom health care is provided and include, but are not limited to:

(i) Determinations of eligibility or coverage (including coordination of benefits or the determination of cost sharing amounts), and adjudication or subrogation of health benefit claims;

(ii) Risk adjusting amounts due based on enrollee health status and demographic characteristics;

(iii) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance (including stop-loss insurance and excess of loss insurance), and related health care data processing;

(iv) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

(v) Utilization review activities, including pre-certification and preauthorization of services, concurrent and retrospective review of services; and

(vi) Disclosure to consumer reporting agencies of any of the following protected health information relating to collection of premiums or reimbursement:

a. Name and address;
b. Date of birth;
c. Social security number;
d. Payment history;
e. Account number; and
f. Name and address of the health care provider and/or health plan.

(c) Payment support operations. The information may be disclosed to a person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans, consistent with 45 CFR 164.506(c).

(1)However, information so disclosed shall not be further disclosed by the recipient in a way that would violate Civil 56.13.

(2) Depending on the outcome of an entity's HIPAA preemption pursuant to 45 CFR 160. 203, IHI may be disclosed to a person or entity that provides billing, claims management, medical data processing, or other administrative services for an insurer, employer, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient.

(3) No person or entity engaged in the business of furnishing administrative services to programs that provide payment for health care services shall knowingly use, disclose, or permit its employees or agents to use or disclose medical information possessed in connection with performing administrative functions for a program, except as reasonably necessary in connection with the administration or maintenance of the program consistent with 45 CFR 164.504(f)

and 45 CFR 164.514(g) when applicable, or as required by law, or with an authorization.

(4) Depending on the outcome of an entity's HIPAA preemption pursuant to 45 CFR 160. 203, a third party administrator who also underwrites or sells annuity contracts or contracts insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, and any affiliate of that person or entity, shall not disclose individually identifiable information concerning the health of, or the medical or genetic history of, a customer, to any affiliated or nonaffiliated depository institution, or to any other affiliated or nonaffiliated third party for use with regard to the granting of credit.

(d) Healthcare operations.

(1) The information may be disclosed to:

(A) Organized committees and agents of professional societies or of medical staffs of licensed hospitals,

(B) Licensed health care service plans,

(C) Professional standards review organizations,

(D) Independent medical review organizations and their selected reviewers,

(E) Utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982,

(F) Contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur,

(G) If the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(2) A health care provider or health care service plan may disclose IHI to another health care provider or health care service plan for the following purposes:

(A) Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that

the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities;

(B) population-based activities relating to improving health and reducing health care costs,

(C) protocol development,

(D) case management and care coordination,

(E) contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(F) Reviewing the competence or qualifications of health care professionals,

(G) evaluating practitioner and provider performance, health plan performance,

(I) accreditation, certification, licensing, or credentialing activities,

(J) for the purpose of fraud and abuse detection or compliance,

(K) if each entity has or had a relationship with the individual who is the subject of the IHI being requested and the IHI pertains to such a relationship.

(e) Research purposes to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions.

(1) Healthcare providers and health services plans must comply with 45 CFR 164.512(i).

(2) No information so disclosed shall be further disclosed by the recipient in a way that would disclose the identity of a patient or violate Civil Code section 56.13.

(f) Otherwise authorized by law. Civil Code section 56.10(c)(14) does not incorporate HIPAA permitted uses and disclosures into the CMIA permitted disclosures. IHI may be disclosed when the disclosure is otherwise specifically authorized by law for the purpose of public health and safety, including, but not limited to:

(1) The voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems;

(2)Disclosures made pursuant to subdivisions (b) and (c) of Section 11167 of the Penal Code by a person making a report pursuant to Sections 11165.9 and 11166 of the Penal Code, provided that those disclosures concern a report made by that person;

(3) Disclosures by healthcare providers who are member of the work force of a covered entity and the purpose for the disclosure is to report the findings as required under state and federal laws in accordance with 45 CFR 164.512(b)(1)(v):

(A) To conduct an evaluation relating to medical surveillance of the workplace; or

(B) To evaluate whether the individual has a work-related illness or injury.

(4) Disclosures to funeral directors in accordance with 45 CFR 164.512(g)(2) if limited to only for public health and safety reasons tied to their duties with respect to the decedent;

(5) Disclosures to authorized federal officials for the conduct of lawful intelligence, counter intelligence and other national security activities consistent with 45 CFR 164.514(k)(2);

(6) Disclosures to authorized federal officials for the provision of protective services to the president consistent with 45 CFR 164.514(k)(3); and

(7) Disclosures under Patient Safety and Quality Improvement Act of 2005.

(g) Employee Welfare Benefit Plan. Disclosures pursuant to Civil Code Section 56.10(c)(21) to an employee welfare benefit plan, as defined under Section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1002(1)), which is formed under Section 302(c)(5) of the Taft-Hartley Act (29 U.S.C. Sec. 186(c)(5)), to the extent that the employee welfare benefit plan provides medical care, and may also be disclosed to an entity contracting with the employee welfare benefit plan for billing, claims management, medical data processing, or other administrative services related to the provision of medical care to persons enrolled in the employee welfare benefit plan for health care coverage.

(h) Abuse reporting pursuant to Civil Code section 56.10(c)(22), in accordance with Welfare and Institutions Code 15633.5(a) and 45 CFR 164.512(c).

(i) Other permitted disclosures: Depending on the outcome of an entity's HIPAA preemption pursuant to 45 CFR 160. 203, IHI may be disclosed for:

(1) Licensing and Accreditation pursuant to Civil Code section 56.10(c)(5) and 45 CFR 164.512(d). However, no patient-identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in a way that would violate this part.

(2) Investigation by Coroner pursuant to Civil Code section 56.10(c)(6) and 45 CFR 164.512(g).

(3) Employment related services. The information may be disclosed pursuant to Civil Code section 56.10(c)(8) and 45 CFR 164.512(b)(1)(v), 164.512(l),164.514(d).

(4) Health Services Rendered for the Purpose of Evaluating Application for Coverage or Benefits. The information may be disclosed pursuant to Civil Code section 56.10(c)(9) and 45 CFR 164.504(f).

(5) Health Care Service Plan Administration. The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, pursuant to Civil Code section 56.10(c)(10) and 45 CFR 164.506and the IHI shall not otherwise be disclosed by a health care service plan except in accordance with Civil Code section 56.13.

(6) Insurance Information and Privacy Protection Act. Information may be disclosed by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all of the requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code and HIPAA.

(7) Guardianship-Conservatorship investigation pursuant to Civil Code section 56.10(c)(12) and HIPAA.

(8) Organ Procurement. The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person pursuant to Civil Code section 56.10(c)(13) and 45 CFR 164.512(h).

(9) Disaster Relief pursuant to pursuant to Civil Code sections 56.10(c)(15) and 56.1007(e) and 45 CFR 164.510(b)(4) and 164.512(j).

(10) De-identifying IHI pursuant to Civil Code section 56.10(c)(16) and 45 CFR 164.514(a)&(e).

(11) Disease Management pursuant to Civil Code section 56.10(c)(17) and 45 CFR 164.502(1)(ii).

(12) Public Health Reporting pursuant to Civil Code section 56.10(c)(18), 56.30, and 45 CFR 164.512(a)&(b).

(13) Psychotherapist Disclosures pursuant to Civil Code section 56.10(c)(18) and 45 CFR 164.512(j).

(14) Disclosures pursuant to Civil Code section. 56.10(c)(18), 56.103; Health and Safety Code section 123115(a) and 45 CFR 164.502(1)(i) & (g) to a county social worker, a probation officer, or any other person who is legally authorized to have custody or care of a minor for the purpose of coordinating health care services and medical treatment provided to the minor.

(15) Disclosures permitted by law under the exemptions to the CMIA (56.30), depending on the outcome of an entity's HIPAA preemption pursuant to 45 CFR 160. 203.

8. Permitted Uses of Individual Health Information

Except to the extent expressly authorized by a patient or enrollee or subscriber or as provided by subdivisions 6 and 7 or a more stringent law:

(a) A provider of health care, health care service plan, contractor, or corporation and its subsidiaries and affiliates shall not intentionally share, sell, use for marketing, or otherwise use medical information for a purpose not necessary to provide health care services to the patient or in violation of a more stringent law.

(b) A health care provider or health care service plan may not use IHI for the following purposes:

(1)Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or coverage policies;

(2) Business management and general administrative activities of the entity not necessary for the provision of health care to the patient, except resolution of internal grievances and compliance with regulatory requirements;

(3) The sale, transfer, merger, or consolidation of all or part of the covered entity with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity;

(4) Fundraising for the benefit of the healthcare provider or health care service plan.